A **MAJLIS PERBANDARAN SUBANG JAYA**

v.

THE ALICE SMITH SCHOOLS ASSOCIATION

B FEDERAL COURT, PUTRAJAYA
JAMES FOONG FCJ
RAUS SHARIF FCJ
HELILIAH MOHD YUSOF FCJ
[CIVIL APPEAL NO: 01-(i)-13-2008-(B)]
C 9 DECEMBER 2010

LOCAL GOVERNMENT: *Rates - Annual value - Rate of assessment - Running of private school - Whether contractor's test appropriate method to be used - Whether comparison with buildings within proximity made - Whether valuation officer exercised due care and diligence in arriving at holding's market value - Whether different land use attracts different market value - Whether holding used for commercial purposes - Whether rate of assessment differed*

D

E The appellant was a local authority whereas the respondent was a private limited company involved in the business of running a private school on a piece of land ('the land'). There were, *inter alia*, school buildings and sports facilities erected on the said land. This entire entity was considered as a "holding" for the
F determination of the annual value on which assessment under the Local Government Act 1976 ('the Act') was based. From 1 July 1999 to 31 December 2001, the assessment imposed by the appellant on the holding was RM68,674.20 based on an increase annual value of RM1,144,570. This increase was attributed to the
G issuance of the certificate of fitness for the structures and facilities on the land. The respondent objected to this increase and posted their objection under s. 142 of the Act but no decision was made. The appellant then appointed the Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') as an independent valuer to conduct a
H fair and appropriate valuation of the holding. Upon valuation, JPPH came up with the opinion that the annual value as at 7 September 2001 was RM3,031,000. A notice was then sent by the respondent imposing an assessment of RM181,860 on the holding commencing from 1 January 2002. The appellant then
I further reduced the annual value to RM2,975,000 and the assessment was adjusted accordingly to RM178,500. Dissatisfied,

the respondent appealed to the High Court under s. 145(1) of the Act and the learned Judicial Commissioner ('JC') allowed the respondent's appeal deciding that the appropriate method for determining the annual value of the holding was the contractor's test as advanced by the private valuer. Hence, the appellant filed the present appeal to this court *vide* s. 145(5) of the Act and the issue that arose for consideration was whether the learned JC was right in rejecting the valuation of the holding by the JPPH valuation officer in preference of the valuation by the respondent's private valuer.

Held (allowing appeal with costs; setting aside order of High Court)

Per James Foong & Raus Sharif FCJJ delivering the judgment of the court:

(1) The learned JC was in fact setting aside the proper and reasonable exercise of power and discretion of the valuation officer in determining the market value of the holding when he rejected JPPH's valuation report. On the facts, the valuation officer had taken into account not only the express condition of the holding but also the fact that the holding was then complete, among others, with five blocks of one storey building with Olympics size swimming pool, sports centre, an air conditioned gallery, a multi purpose hall erected thereon and the certificate of fitness had been issued. (para 17)

(2) The valuation officer took cognizance of the fact that there was no holding similar to the respondent's holding in the locality of Seri Kembangan in term of its use and nature and had thus used comparative buildings within the proximity of Seri Kembangan in arriving at the fair value of the holding. Hence, the valuation officer had exercised due care and diligence in arriving at the holding's market value. (para 18)

(3) The learned JC's ruling that the express condition of the land title of the holding was for "building" only and not for commercial building was an error. Further, different land use attracts different market value. A holding which could be erected with commercial building certainly attracts a higher premium and pricing value compared to an agricultural or residential building. Thus, the learned JC could not simply disregard or ignore the express condition as imposed by the State Authority. (paras 19 & 20)

(4) The finding that the respondent was not a profit making entity was contrary to the evidence found in this case. If the holding was not used for commercial purposes, then, the respondent was to apply for an exemption or reduction of rate as provided under ss. 134 and 135 of the Act. This option was however not exercised by the respondent. It was obvious that the respondent was running an exclusive international school with profit as its main consideration. (paras 22 & 23)

[The annual value of the holding of RM2,975,000 and its corresponding annual assessment to RM178,500 as determined by the appellant was affirmed.]

Bahasa Malaysia *Translation Of Headnotes*

Perayu merupakan pihak berkuasa tempatan manakala responden adalah syarikat sendirian berhad yang terlibat dalam perniagaan mengendalikan sebuah sekolah swasta atas sebidang tanah ('tanah'). Terdapat, antara lain, bangunan sekolah dan kemudahan sukan yang didirikan di atas tanah tersebut. Keseluruhan kawasan tersebut dianggap sebagai "pegangan" bagi menentukan nilai taksiran tanah di bawah Akta Kerajaan Tempatan 1976 ('Akta'). Dari 1 Julai 1999 sehingga 31 Disember 2001, taksiran yang dikenakan oleh perayu terhadap pegangan adalah RM68,674.20 berdasarkan peningkatan nilai tahunan sebanyak RM1,144,570. Peningkatan ini disebabkan oleh pengeluaran sijil layak menduduki bagi pembinaan dan kemudahan atas tanah. Responden telah membantah terhadap peningkatan tersebut lalu mengemukakan bantahannya di bawah s. 142 Akta tetapi tiada keputusan yang dibuat. Perayu kemudian melantik Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') sebagai penilai bebas untuk mengendalikan penilaian yang adil dan berpatutan bagi pegangan. Atas penilaian, JPPH telah memberi pendapat bahawa nilai tahunan pada 7 September 2001 adalah RM3,031,000. Satu notis kemudian dihantar oleh responden dengan mengenakan taksiran sebanyak RM181,860 atas pegangan bermula dari 1 Januari 2002. Perayu selanjutnya mengurangkan nilai tahunan kepada RM2,975,000 dan taksiran diselaras sebaik-baiknya kepada RM178,500. Tidak berpuas hati, responden merayu ke Mahkamah Tinggi di bawah s. 145(1) Akta dan yang arif Pesuruhjaya Kehakiman ('PK') membenarkan rayuan responden dengan memutuskan bahawa kaedah sepatutnya untuk menentukan nilai

tahunan pegangan adalah berdasarkan ujian kontraktor seperti yang dilanjutkan oleh penilai swasta. Oleh itu, perayu memfailkan rayuan ke mahkamah ini melalui s. 145(5) Akta dan isu yang dibangkitkan untuk pertimbangan adalah sama ada yang arif PK betul dalam menolak penilaian pegangan oleh pegawai penilaian JPPH dan bersetuju dengan penilaian yang dibuat oleh penilai swasta.

Diputuskan (membenarkan rayuan dengan kos; mengenepikan perintah Mahkamah Tinggi)
Oleh James Foong & Raus Sharif HHMP menyampaikan penghakiman mahkamah:

(1) Yang arif PK telah, sebenarnya mengenepikan suatu pelaksanaan kuasa dan budi bicara munasabah dalam menentukan nilai pasaran pegangan apabila beliau menolak laporan penilaian JPPH. Berdasarkan fakta, pegawai penilaian telah mengambil kira bukan sahaja terma nyata pegangan tetapi juga fakta bahawa pegangan telah disiap bina, antara lain, yang merangkumi lima blok bangunan satu tingkat dengan kolam renang bersaiz Olimpik, pusat rekreasi, galeri berhawa dingin, dewan serbaguna yang didirikan di atasnya dan sijil layak menduduki telah pun dikeluarkan.

(2) Pegawai penilaian telah mengambil kira fakta bahawa tiada pegangan yang sama seperti pegangan responden dalam kawasan Seri Kembangan dari segi penggunaan dan sifat dan oleh itu, telah menggunakan bangunan-bangunan yang boleh dibandingkan dengan jarak berdekatan Seri Kembangan dalam menentukan nilai berpatutan bagi pegangan. Dengan itu, pegawai penilaian telah menjalankan ketelitian yang sewajarnya dalam mencapai nilai pasaran pegangan.

(3) Keputusan yang Arif PK bahawa terma nyata hak milik tanah adalah bagi "bangunan" sahaja dan bukannya untuk bangunan komersial adalah suatu kekhilafan. Tambahan lagi, penggunaan tanah berlainan menarik nilai pasaran berlainan. Suatu pegangan yang boleh didirikan dengan bangunan komersial jelas menarik premium tinggi dan nilai harga berbanding dengan pertanian atau bangunan kediaman. Oleh itu, yang arif PK tidak boleh mengabaikan terma nyata yang telah dikenakan oleh Pihak Berkuasa Negeri.

A **(4)** Dapatan bahawa responden bukan suatu entiti yang mengaut keuntungan adalah bertentangan dengan keterangan yang didapati dalam kes ini. Jika pegangan tidak digunakan bagi kehendak komersial, maka, responden mestilah memohon untuk pengecualian atau pengurangan kadar seperti diperuntukkan di
B bawah ss. 134 dan 135 Akta. Pilihan ini walau bagaimanapun tidak dilaksanakan oleh responden. Adalah jelas bahawa responden sedang menjalankan sebuah sekolah antarabangsa eksklusif dengan mengaut keuntungan sebagai pertimbangan asasnya.

C *[Nilai tahunan pegangan sebanyak RM2,975,000 dan taksiran tahunan sebanyak RM178,500 seperti ditentukan oleh perayu disahkan.]*

Legislation referred to:
Local Government Act 1976, ss. 2, 134, 135, 142, 145(1), (4), (5)

D *For the appellant - Abdullah Abdul Rahman (Wan Haron & Aliza with him); M/s Wan Haron Sukri & Nordin*
For the respondent - Nicole Wee (Sharmala Balasundram with her); M/s Chooi & Co

E *[Appeal from High Court, Shah Alam; Originating Motion No: MT1-25-20-2002]*

Reported by Kumitha Abd Majid

F **JUDGMENT**

James Foong & Raus Sharif FCJJ:

Introduction

G **[1]** The appellant is the local authority of Subang Jaya in the State of Selangor. The respondent is a private limited company and is involved in the business of running a private school on land held under Lot PT 39626, Mukim and District of Petaling, Selangor (the land). The land is 117,069 square feet and erected
H thereon are school buildings and sports facilities including a swimming pool. This entire entity is considered a "holding" for the determination of annual value on which assessment under the Local Government Act 1976 ("the Act") is based. The buildings and structures on the land were completed in 1998 and in the
I same year the respondent occupied and utilised them.

[2] From 1 July 1999 to 30 June 2000, the assessment imposed by the appellant on the holding was RM65,400 which is 6% of the annual value of RM1,090,000. Subsequently, from 1 July 1999

to 31 December 2001, the assessment was increased to RM68,674.20 based on an increase annual value of RM1,144,570. This increase was attributed to the issuance of certificate of fitness for the structures and the facilities on the land. The respondent objected ("1st objection") to this increase and posted their objection under s. 142 of the Act which provides:

> Any person aggrieved on any of the following grounds:
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> (a) that any holding for which he is rateable is valued beyond the rateable value;
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> (b) that any holding value is not rateable;
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> (c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;
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> (d) that any holding is valued below its rateable value; or
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> (e) that any holding or holdings which have jointly or separately valued ought to be valued otherwise,
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> may make any objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the Valuation List.
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> (2) All objections shall be enquired into and the persons making them shall at such enquiry be allowed the opportunity of being heard either in person or by an authorized agent.

[3] On 14 December 2000, an objection hearing was held by the appellant but no decision was made. The appellant then appointed Jabatan Perkhidmatan Harta Negeri Selangor ("JPPH") as an independent valuer to conduct a fair and appropriate valuation of the holding for the purpose of determining the annual value which was under dispute. By this appointment JPPH is considered as the "valuation officer" as set out in s. 2 of the Act which provides:

> "Valuation Officer" means any Valuation Officer appointed by the local authority.

[4] JPPH valued the holding and came up with the opinion that the annual value as at 7 September 2001 was RM3,031,000. The appellant accepted this and issued a notice to the respondent dated 6 November 2001 imposing an assessment of RM181,860

on the holding commencing from 1 January 2002. This is based on 6% of the annual value estimated by JPPH. Dissatisfied with this, the respondent filed an objection ("2nd objection") with the appellant. As a result of this, on 11 April 2002, the respondent received a letter from the appellant announcing that it has decided to reduce the annual value to RM2,975,000 and the assessment was adjusted accordingly to RM178,500 to take effect on 1 January 2002.

[5] Again unhappy over this, the respondent this time filed an appeal by way of originating motion to the High Court as provided for under s. 145(1) of the Act which states:

> Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion ...

[6] The High Court heard this appeal and on 7 May 2007, allowed the respondent's appeal and made the following orders:

(1) The annual value of RM2,957,000 adopted by the appellant on the assessment of RM176,500 is based and to commence from 1 January 2002 is set aside.

(2) The annual value shall be RM686,400 and the assessment derived there from at 6% shall be RM41,184 effective from 1 January 2002.

(3) "Kategori kegunaan tanah sepatutnya adalah 'Bangunan' dan syarat nyata sepatutnya adalah untuk tujuan 'Sekolah Persendirian"

(Translated: Category of land use in effect is 'Building' and condition in effect for 'Private School').

4. Costs of this appeal to be paid by the appellant.

[7] To support her decision, the learned Judicial Commission gave the following grounds:

> Daripada penelitian saya terhadap penghujahan oleh peguam pihak-pihak seperti yang dinyatakan di atas, saya merasakan bahawa saya tidak dapat bersetuju dengan penghujahan peguam responden, terutamanya mengenai status bangunan Alice Smith School.

Peguam responden menyandarkan keseluruhan hujahnya mengenai justifikasi penilaian kepada secebis keputusan Carian Persendirian di Pejabat Tanah yang menyebutkan status bangunan di atas hartanah tersebut sebagai "bangunan perniagaan". Berdasarkan ini sahaja responden telah menganggap perayu sebagai satu entiti komersial. Saya tidak bersetuju dengan kesimpulan yang dicapai oleh responden dan saya mendapati bahawa status bangunan adalah bangunan sahaja dan ia tetap kekal sebagai digunakan untuk tujuan sekolah persendirian semata-mata. Kesimpulan yang dicapai oleh responden bahawa perayu adalah satu entiti komersial telah mempengaruhi keseluruhan keputusannya mengenai hartanah tersebut. Saya amat yakin bahawa kesimpulan yang dicapai oleh responden itu adalah tidak tepat dan begitu juga dengan keputusan yang telah dibuat olehnya mengenai nilaian dan taksiran tahunan bagi harta tersebut.

Saya tidak menyangkal bahawa kaedah perbandingan adalah kaedah yang diterimapakai dan biasa digunakan untuk menilaikan sesuatu hartanah. Walau bagaimanapun, perbandingan yang dibuat sepatutnya melibatkan hartanah berhampiran dari jenis yang serupa.

Di dalam kes ini reponden tidak menyangkal fakta bahawa tidak terdapat hartanah yang betul-betul serupa dari segi penggunaan dan sifatnya berhampiran dengan hartanah tersebut.

Walau bagaimanapun, saya mendapati bahawa kaedah perbandingan yang dibuat JPPH dan diterimapakai oleh responden tidak menunjukkan perbandingan samarata dari aspek jenis bangunan, tujuan bangunan dan kemudahan sebenar. Responden tidak memberikan justifikasi bagaimana pihaknya boleh mencapai kesimpulan mengenai "nilai pulangan komersial terhad" bagi hartanah tersebut adalah pada kadar 7% sedangkan responden menyedari bahawa nilaian bagi sekolah-sekolah swasta yang berhampiran adalah disekitar RM43,000. Saya bersetuju dengan penghujahan peguam perayu bahawa kaedah nilaian yang sepatutnya digunakan bukan nilai hartanah dan bangunan didarab dengan kadar pulangan, tetapi ujian nilaian kontraktor, iaitu sewa bulanan yang mampu dibayar oleh pemilik.

Translation in English:

From my observation towards both counsels' submissions above, I feel that I cannot agree with the respondent's submission especially in regards to the status of the building of the Alice Smith School. The respondent's counsel based his whole submission towards the justification of the valuation on a private

A search report by the Land Office which stated the status of the building on the said land as 'commercial building'. By this reason alone the respondent had assumed the status of the appellant as being a commercial entity. I do not agree with the conclusion reached by the respondent and I find that the status of the building as building only and will remain so for the sole purpose of a private school. The conclusion reached by the respondent that the appellant is a commercial entity had influenced the respondent's whole decision towards the said property. I strongly believe that the conclusion reached by the respondent was not correct as was the decision it had made regarding the valuation and the annual assessment of the said property.

I do not deny that the comparison method is the method applicable and adopted in assessing a particular property. However, the comparison made should involve properties within its proximity and of the same type. In our case the respondent did not deny the fact that there is no property which is identical in regards to its usage and character to be compared with the said property.

Nevertheless, I find that the comparison method carried out by Jabatan Perkhidmatan Harta Negeri Selangor (JPPH) and adopted by the respondent did not show an equal comparison from the aspect of the building category/type, the purpose of the building and its actual facilities. The respondent did not justify how it reached the conclusion on the 'limited commercial value returns' for the said property at the rate of 7% although it realized that the valuation for other private schools within its proximity were within a RM43,000 range. I agree with the appellant's submission that the valuation method which should have been adopted is not the value of the property and building times the returns rate, but the contractor's test method, ie, the monthly rental that the proprietor can afford to pay.

[8] Under s. 145(4) of the Act, this decision of the High Court "on question of fact shall be final and conclusive". However, s. 145(5) of the Act provides:

From the decision of the High Court either party may appeal on question of law to the Federal Court whose decision shall be final and conclusive.

[9] And relying on this provision, the appellant filed notice of appeal to the Federal Court and in its memorandum of appeal, seven grounds were listed. In our opinion, it can be condensed to six since one of them overlap the other. These six grounds are:

(1) The High Court has erred in finding the respondent was not a commercial profit-making entity when the respondent in its affidavit has declared that it is carrying on business of running a private school and the title to land has an express condition: "Bangunan Perniagaan" (Business premises).

(2) The High Court has erred in failing to appreciate the valuation conducted by JPPH as a commercial profit-making entity.

(3) The High Court has erred in law in rejecting the "comparison method" adopted by JPPH, "Valuation Officer" instead of "contractor's test" preferred by the private valuer.

(4) The High Court has erred in rejecting the "comparison method" used by JPPH due to JPPH's failure to take into account other similar holdings in type and purpose.

(5) The High Court has erred in taking into account the assessments paid by nearby private schools RM45,000 as a comparison without taking into account the particulars of these comparables.

(6) The High Court has erred in law in accepting the respondent's valuation without stating the basis for it.

Analysis

[10] From the above, we find that there is no points of law in ground 1, 2, 4, 5 and 6. They relate to a question of fact which this court by virtue of s. 145(5) of the Act will not entertain. Ground 1 requires the High Court to decide on whether the respondent is a commercial profit-making entity. The two factors highlighted by the appellant in its memorandum of appeal were considered by the learned Judicial Commissioner but were rejected in preference to other evidence. This is a finding of fact which this court should not intervene. The same goes for ground 2 which is of similar to that listed in ground 1. As for ground 4, which involves a consideration by the High Court of certain comparables necessary for the "comparison method" this will only be relevant if the High Court has decided to adopt this method used by JPPH. But since the High Court has adopted another valuation method in its deliberation, this ground is presumptuous. Further, this involves question of fact rather than law. Ground 5 is a

A complaint against the learned Judicial Commissioner for not taking into consideration certain factors present in certain comparables for use in the valuation. But this is a question of fact, not law. As to ground 6, it involves the exercise of discretion by the learned Judicial Commissioner based on facts. As such it is outside B the ambit of s. 145(5) of the Act. This leaves only ground 3 which focuses on the preference of the method to be used in arriving at the annual value of the holding.

[11] But before we proceed to deliberate on this issue, let us C disclose the meaning of annual value. Annual value is defined in s. 2 of the Act as:

> "annual value" means the estimated gross annual value at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance D or upkeep and all public rates and taxes:
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> Provided that:
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> (a) In estimating the annual value no account shall be taken of any restrictions or control on rent in so far as it limits the E rent which may be required by a landlord or recovered from a tenant of a holding;
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> (b) In estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes; F
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> (i) the making of any article or part of an article;
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> (ii) the altering, repairing, ornamenting or finishing of any article;
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> G (iii) the adapting for sale of any article, the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and for the purposes of this paragraph "machinery" includes steam engines, boilers or other motive power belonging to such machinery; H
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> (c) in the case of any land:
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> (i) which is partially occupied or partially built upon;
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> (ii) which is vacant, unoccupied or not built upon; I

(iii) with an incomplete building; or

(iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation,

the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of subparagraphs (ii), (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five per centum;

(d) where in respect of any particular holding, in the opinion of the Valuation Officer, there is insufficient evidence to base a valuation of annual as in his opinion appears appropriate to arrive at the annual value.

[12] It can be seen from the above that in determining the annual value of any land which is partially occupied or partially built upon, it shall either be the annual value as therein defined or ten per centum of the open market value thereof at the absolute discretion of the valuation officer. The valuation officer referred to under the Act is the valuation officer as defined in s. 2 of the Act which means "any valuation officer appointed by the local authority".

[13] In the instant case, as stated earlier, the holding under value is a land with buildings erected thereon. The appellant had for the purpose of determining the annual value of the holding had chose to appoint the valuation officer from the Jabatan Perkhidmatan Harta Negeri Selangor (JPPH) to determine its open market value.

[14] It is not in dispute that in determining the open market value, the JPPH Valuation Officer had adopted the comparison method. The comparison method (as described by JPPH) is basically identifying comparables of sales of nearby properties which were transacted at arm's length to determine the market

A value of the holding and based on this market value assign an appropriate percentage to it as the return derived from this type of property. In the exact words of JPPH:

> Daripada nilai pasaran ini, kadar pulangan yang sesuai bagi jenis harta tanah berkenaan diambilkira sebagai nilaian tahun.

B

[15] The JPPH Valuation Officer in valuing the open market value of the holding had taken into account that the holding is a commercial holding with among others, classroom blocks, an Olympic size swimming pool, sports centre and air-conditioned C gallery erected thereon and that the holding was used as a private and exclusive international school. The Valuation Officer had also made comparison to the sales of land for similar schools in the vicinity of the holding ie,:

D (i) Lot 3587 Hicom Glenmarie;

(ii) Mont Kiara International School;

(iii) Tapak Sekolah Swasta Mukim Sg. Buloh, Daerah Petaling at Bandar Sri Damansara;

E

and had made the necessary adjustment in determining the holding open market value. The open market value of the holding as determined by the JPPH Valuation Officer, which was later used by the appellant as a guide to determine the annual value of the F holding and its corresponding annual assessment.

[16] However, the learned Judicial Commissioner rejected the comparison method adopted by the JPPH Valuation Officer and instead held that the appropriate method in determining the annual G value of the holding was the contractor's test as advanced by the private valuer employed by the respondent. The contractor's test of determining the annual value, as described by the private valuer is as follows:

> H The first stage is to estimate the cost of construction of the building.
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> The second stage is to make a deduction from the cost of construction to allow for age, absolescence and other factors in order to arrive at the "effective capital value".
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> I The third stage is to estimate the cost of the land according to the principle of *"rebus sic standibus"*.

> The fourth stage is to apply the market rate or rates which money can be borrowed or invested to the effective capital values of the buildings and the land. The result is what it would cost the occupier, in annual terms, to provide the hereditament for him, rather than to lease it.
>
> The fifth stage is to consider whether the result of the fourth really represents what the hypothetical tenant would pay for an annual tenancy on the statutory terms, and to make any adjustments necessary to ensure that no higher rent is fixed as the basis of assessment than that which is believed that the owner would really be willing to pay for the occupation of the premises.

[17] The question is, was the learned Judicial Commissioner right in rejecting the valuation of the holding by the JPHH Valuation Officer, in preference of the valuation by the respondent's private valuer. With respect, we do not think so. The learned Judicial Commissioner in rejecting the valuation report of the JPPH Valuation Officer was in fact setting aside the proper and reasonable exercise of power and discretion of the Valuation Officer in determining the market value of the holding. No doubt it is open for the learned Judicial Commissioner to reject the valuation of the valuation officer but it can only be done if it can be shown that the valuation officer had wrongly exercise his discretion or he had contravened the law by acting in excess of the powers given by the Act. In the instant case, the valuation officer in carrying out the valuation on the holding, had taken into account not only the express condition of the holding but also the fact that the holding was then complete among others, with five blocks of one storey building with Olympic size swimming pool, sports centre, an air conditioned gallery, a multi purpose hall erected thereon and that the certificate of fitness had been issued.

[18] The valuation officer also took cognizance of the fact there was no holding similar to the respondent's holding in the locality of Seri Kembangan in term of its use and nature and thus use comparative buildings within the proximity of Seri Kembangan in arriving at the fair value of the holding. In short, the valuation officer had exercised due care and diligence in arriving at the market value of the holding. Thus, the learned Judicial Commissioner was not entitled to reject the JPPH Valuation Officer valuation of the holding, and resorted to the valuation report prepared by the private valuer of the respondent. This is

especially so, when the learned Judicial Commissioner did not provide ample justification as to why she preferred to adopt the private valuer's valuation rather than the valuation by the JPPH Valuation Officer.

[19] We are also of the view that the learned Judicial Commissioner's ruling that the express condition of the land title of the holding was for "Building" only, and not for Commercial Building was an error. Under the National Land Code ("NLC"), the category of land use as stated and stipulated in the title is either, agricultural, residential or commercial. It is known and accepted that different land use attracts different market value. A holding which could be erected with commercial building certainly attracts a higher premium and pricing value than an agricultural or residential holding.

[20] In the instant case, the express condition for the respondent's holding is "Bangunan Perniagaan" (Commercial Building). Thus, the learned Judicial Commissioner was in error when she ruled that notwithstanding the said express condition, "the category of land used continued to be that of Building only for the purpose of private school" ("status bangunan adalah bangunan sahaja dan ia tetap kekal sebagai digunakan untuk tujuan sekolah persendirian semata-mata"). With respect, the learned Judicial Commissioner could not simply disregard or ignore the express condition as imposed by the State Authority.

[21] Thus, we are of the view that the appellant was right to use the valuation of the JPPH Valuation Officer as the guide in determining the annual value of the respondent's holding and the annual assessment of the same. In fact, the appellant, on objection by the respondent had reduced the annual value as found by the JPPH Valuation Officer from RM3,031,000 to RM2,975,000. The assessment was adjusted accordingly from RM181,860 to RM178,500.

[22] In any event, the learned Judicial Commissioner's reasons of resorting to the contractor's test, was very much influenced by the respondent's contention that they were not a profit making entity and therefore should not be imposed with a rate for a holding with commercial building on it. Firstly, the finding that the respondent was not a profit making entity was contrary to the

evidence found in this case. Secondly, even if the holding was not used for commercial purposes, then more appropriate steps to be taken by the respondent was to apply for an exemption or reduction of rate as provided under ss. 134 and 135 of the Act which provides as follows:

> 134. Exemption from rates.
>
> When any holding or part thereof is used exclusively:
>
> (a) as public places for religious worship;
>
> (b) as licensed public burial grounds or crematoria;
>
> (c) for public schools;
>
> (d) as public places for charitable purposes or for the purposes of science, literature or the fine arts,
>
> and not for pecuniary profit, the State Authority may at its discretion exempt such holding or such part thereof from the payment of any rate.
>
> 135. Exemption or reduction of rate.
>
> When any holding or part thereof is used exclusively for recreational, social or welfare purposes and not for pecuniary profit, the State Authority may at its discretion exempt such holding or such part thereof from the payment of all or any rates or may reduce any rate imposed on such holding or such part thereof.

[23] It is clear in the instant case that the option was not exercised by the respondent. The reason is obvious as the facts in this case shows that the respondent is running an exclusive international school with profit as its main consideration.

[24] For the aforesaid, we would allow this appeal with costs here and below with the deposit for this appeal to be returned to the appellant. The orders of the High Court are set aside. The annual value of the holding of RM2,975,000 and its corresponding annual assessment to RM178,500 as determined by the appellant is affirmed.

[25] Our sister Heliliah FCJ has read this judgment in draft and associate herself with it.